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CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

Report of the Sixth Committee convening as the Working Group of the Whole

Chairman: Mr. Chusei YAMADA (Japan)

I. INTRODUCTION

1. Pursuant to paragraph 2 of General Assembly resolution 51/206 of 17 December 1996, the Working Group of the Whole of the Sixth Committee, which was convened under General Assembly resolution 49/52 of 9 December 1994, held its second session from 24 March to 4 April 1997 to elaborate a framework convention on the law of the non-navigational uses of international watercourses.[1]

2. The Working Group was chaired, as was the case in the first session, by Mr. Chusei Yamada (Japan) and the Drafting Committee was chaired, also as during the first session, by Mr. Hans Lammers (Netherlands) (A/C.6/51/L.3, para. 2). Mr. Robert Rosenstock, former Special Rapporteur of the International Law Commission on the topic, acted as Expert Consultant to the Working Group.

3. The Working Group held 12 meetings from 24 March to 4 April 1997. The views of the representatives who spoke during those meetings are reflected in the relevant summary records (A/C.6/51/SR.51 to 62).

4. The Drafting Committee held six meetings, from 24 to 27 March 1997. The Chairman of the Drafting Committee introduced the report of the Drafting Committee (A/C.6/51/NUW/L.1/Rev.1 and Add.1). The statements by the Chairman of the Drafting Committee introducing its report are reflected in the relevant summary records (A/C.6/51/SR.24 and 53).

5. In the course of the discussion of the text of the draft convention, the following were appointed coordinators of informal consultations:

Mr. Jean François Pulvenis (Venezuela), on the preamble; Mr. Robert Harris (United States of America) on article 3, paragraphs 2 and 4; Mr. Attila Tanzi (Italy) on article 3, paragraph 3; Ms. Socorro Flores (Mexico) on articles 5 and 6; Mr. Tobias Nussbaum (Canada) on article 7; Mr. Rolf Welberts (Germany) on article 8; Mr. M. P. Vorster (South Africa) on article 10 (2); and Mr. A. K. H. Morshed (Bangladesh) on articles 20 and 22, as regards the term "ecosystems".

II. CONSIDERATION OF PROPOSALS

6. The Working Group and the Drafting Committee had before them the draft articles adopted by the International Law Commission on the topic[2] and the text of their previous reports, including the oral report of the Chairman of the Drafting Committee (A/C.6/51/L.3; A/C.6/51/NUW/WG/L.1/Rev.1 and A/C.6/51/SR.24), as well as a preliminary draft preamble and final clauses prepared by the Secretariat (A/C.6/51/NUW/DC/CRP.2).

7. The Working Group and the Drafting Committee also had before them the following proposals submitted by States. In the Drafting Committee: proposal submitted by Finland, India and Romania for the preamble to the Convention (A/C.6/51/NUW/DC/CRP.3); proposals submitted by Ireland to amend provisions on final clauses (A/C.6/51/NUW/DC/CRP.4); proposal submitted by Finland for the preamble to the Convention (A/C.6/51/NUW/DC/CRP.7); proposal submitted by Jordan for article 7 (A/C.6/51/NUW/DC/CRP.8); proposal by Ethiopia with respect to article 2 (A/C.6/51/NUW/DC/CRP.9); proposal for article 33 by the Syrian Arab Republic and Switzerland (A/C.6/51/NUW/DC/CRP.10); and amendments proposed by Guatemala to the proposal for article 33 contained in document A/C.6/51/NUW/DC/CRP.10 (A/C.6/51/NUW/DC/CRP.11). In the Working Group: proposals by the United States of America concerning articles 1, 2, 3 and 29 (A/C.6/51/NUW/WG/CRP.1); proposal by Canada concerning article 1 (A/C.6/51/NUW/WG/CRP.2); proposal by Romania on the preamble (A/C.6/51/NUW/WG/CRP.3); proposal by Turkey for article 1 (A/C.6/51/NUW/WG/CRP.4); proposed amendments by the Swiss delegation (A/C.6/51/NUW/WG/CRP.5); proposal submitted by Romania for article 3 (A/C.6/51/NUW/WG/CRP.6); proposal submitted by India for article 3 (A/C.6/51/NUW/WG/CRP.7); proposals submitted by Israel for article 3 (A/C.6/51/NUW/WG/CRP.8); proposals submitted by Ethiopia (A/C.6/51/NUW/WG/CRP.9); proposal submitted by Italy for article 3 (A/C.6/51/NUW/WG/CRP.10); proposals submitted by the Netherlands for articles 5, 8 and 10 (A/C.6/51/NUW/WG/CRP.11); proposal submitted by Turkey for article 3 (A/C.6/51/NUW/WG/CRP.12); proposal submitted by Iraq for article 5 (A/C.6/51/NUW/WG/CRP.13); proposal submitted by South Africa for article 4 (A/C.6/51/NUW/WG/CRP.14); proposal submitted by France for articles 1 and 3 (A/C.6/51/NUW/WG/CRP.15); proposal submitted by the Netherlands for article 3 A/C.6/51/NUW/WG/CRP.16); proposals submitted by the Czech Republic for article 6 (A/C.6/51/NUW/WG/CRP.17); proposals submitted by Finland for articles 6 and 7 (A/C.6/51/NUW/WG/CRP.18); proposal submitted by Israel for article 10 (A/C.6/51/NUW/WG/CRP.19); proposal submitted by Egypt for article 7 (A/C.6/51/NUW/WG/CRP.20); proposal submitted by China for article 3 (A/C.6/51/NUW/WG/CRP.21); proposals submitted by Iraq for articles 3, 4, 7 and 12 (A/C.6/51/NUW/WG/CRP.22); proposal submitted by Romania for article 7

(A/C.6/51/NUW/WG/CRP.23); proposal submitted by Turkey for article 7 (A/C.6/51/NUW/WG/CRP.24); proposals submitted by Finland for articles 1 and 9 (A/C.6/51/NUW/WG/CRP.25); proposal submitted by Canada for article 7 (A/C.6/51/NUW/WG/CRP.26); proposal submitted by Hungary and Romania for article 8 (A/C.6/51/NUW/WG/CRP.27); proposals submitted by India for articles 5 and 6 (A/C.6/51/NUW/WG/CRP.28); proposal submitted by Egypt for article 3 (A/C.6/51/NUW/WG/CRP.29); proposal submitted by the Sudan for article 10 (A/C.6/51/NUW/WG/CRP.30); proposal submitted by Mexico for articles 7 and 9 (A/C.6/51/NUW/WG/CRP.31); proposals submitted by Israel for articles 2 and 3 (A/C.6/51/NUW/WG/CRP.32); proposals submitted by India for the name of the Convention and for article 9 (A/C.6/51/NUW/WG/CRP.33); proposals submitted by the Russian Federation for articles 8, 8 bis and 10 (A/C.6/51/NUW/WG/CRP.34); proposals submitted by Canada, Germany, Italy, Romania and the United States of America for articles 5 and 6 (A/C.6/51/NUW/WG/CRP.35); proposals submitted by the Russian Federation for articles 24 and 25 (A/C.6/51/NUW/WG/CRP.36); proposal by Turkey concerning part III of the draft articles (articles 11-19) (A/C.6/51/NUW/WG/CRP.37); proposals submitted by the Netherlands for articles 12 and 14 (A/C.6/51/NUW/WG/CRP.38); proposal submitted by Iraq for article 3 (A/C.6/51/NUW/WG/CRP.39); proposal submitted by South Africa for articles 6, 8 and 10 (A/C.6/51/NUW/WG/CRP.40); proposal submitted by the Syrian Arab Republic for article 5 (A/C.6/51/NUW/WG/CRP.41); proposals submitted by Canada for article 7 (based on informal attempts at coordination submitted by Canada to the Chairman of the Working Group) (A/C.6/51/NUW/WG/CRP.42); proposals submitted by the Syrian Arab Republic for articles 7 and 8 (A/C.6/51/NUW/WG/CRP.43); proposals submitted by Romania for article 14 (A/C.6/51/NUW/WG/CRP.44); proposals submitted by Finland for article 33 (A/C.6/51/NUW/WG/CRP.45); proposals submitted by Iraq for cluster III (articles 11-19) and article 33 (A/C.6/51/NUW/WG/CRP.46); proposal submitted by the Sudan for article 33 (A/C.6/51/NUW/WG/CRP.47); proposal submitted by Finland for article 21 (A/C.6/51/NUW/WG/CRP.48); proposal submitted by the Syrian Arab Republic for article 33 (A/C.6/51/NUW/WG/CRP.49); proposals submitted by the Netherlands for articles 18, 20, 21, 25 and 26 (A/C.6/51/NUW/WG/CRP.50); proposals submitted by Ethiopia for articles 6 and 7 (A/C.6/51/NUW/WG/CRP.51); proposals submitted by China for articles 20, 22 and 33 (A/C.6/51/NUW/WG/CRP.52); proposal submitted by Egypt for article 6 (A/C.6/51/NUW/WG/CRP.53); proposal submitted by the United Kingdom of Great Britain and Northern Ireland for article 6 (A/C.6/51/NUW/WG/CRP.54); proposals submitted by France concerning article 33 (A/C.6/51/NUW/WG/CRP.55); proposals submitted by Romania for articles 24 and 25 (A/C.6/51/NUW/WG/CRP.56); proposal submitted by Egypt for article 2, paragraph (b) (A/C.6/51/NUW/WG/CRP.57); proposal submitted by Romania for article 33 (A/C.6/51/NUW/WG/CRP.58); proposals submitted by South Africa for articles 11, 12 and 18 (A/C.6/51/NUW/WG/CRP.59); proposal submitted by Turkey concerning article 2 (A/C.6/51/NUW/WG/CRP.60); proposal submitted by the Russian Federation for article 32 (A/C.6/51/NUW/WG/CRP.61); proposals submitted by Guatemala for articles 32 and 33 (A/C.6/51/NUW/WG/CRP.62/Rev.1); proposal submitted by the Russian Federation concerning final clauses (A/C.6/51/NUW/WG/CRP.63/Rev.1); proposal submitted by the Syrian Arab Republic for article (2 or 5) (A/C.6/51/NUW/WG/CRP.64); proposal submitted by the Netherlands for article 17 (A/C.6/51/NUW/WG/CRP.65); proposal submitted by Jordan for article 18 (A/C.6/51/NUW/WG/CRP.66); proposals submitted by Ethiopia for articles 13 and 14 (A/C.6/51/NUW/WG/CRP.67); proposal submitted by Ambassador F. M. Hayes (Ireland) for article 7 (A/C.6/51/NUW/WG/CRP.68);

proposal submitted by Guatemala for article 32 (A/C.6/51/NUW/WG/CRP.69); proposals submitted by Portugal, Venezuela, the United States of America and the Netherlands for article 21, paragraph 3 (A/C.6/51/NUW/WG/CRP.70); proposal submitted by Finland, Greece and Italy for article 33 (A/C.6/51/NUW/WG/CRP.71); revised text of article 7 proposed by Austria, Canada, Portugal, Switzerland and Venezuela (A/C.6/51/NUW/WG/CRP.72); proposed interpretation of article 18 of the draft Convention submitted by Poland (A/C.6/51/NUW/WG/CRP.73); proposal submitted by the United Kingdom of Great Britain and Northern Ireland for article 29 (A/C.6/51/NUW/WG/CRP.74); proposal submitted by Italy for article 3 (A/C.6/51/NUW/WG/CRP.75); proposals submitted by the United States of America concerning articles 2 and 3 (A/C.6/51/NUW/WG/CRP.76); proposal submitted by the Syrian Arab Republic for article 6 (A/C.6/51/NUW/WG/CRP.77); proposal submitted by Canada and Venezuela concerning the preamble (A/C.6/51/NUW/WG/CRP.78); proposal submitted by Romania (A/C.6/51/NUW/WG/CRP.79); proposals by the Russian Federation concerning articles 4 and 5 (A/C.6/51/NUW/WG/CRP.80); proposal submitted by the Netherlands on behalf of the European Community and the United States of America concerning article 2 (A/C.6/51/NUW/WG/CRP.81); proposal submitted by China for article 33 (A/C.6/51/NUW/WG/CRP.82); proposal from the Chairman of the Drafting Committee for article 33 (A/C.6/51/NUW/WG/CRP.83); proposal submitted by Argentina, Austria, Egypt, Germany, Greece, Hungary, the Islamic Republic of Iran, Italy, Jordan, Malaysia, Mali, Portugal, Romania, the Syrian Arab Republic, Tunisia, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Viet Nam concerning article 8 (A/C.6/51/NUW/WG/CRP.84/Rev.1); proposal submitted by Italy for article 7 (A/C.6/51/NUW/WG/CRP.85); proposal submitted by the Russian Federation concerning article 25 (A/C.6/51/NUW/WG/CRP.86); proposal by the Chairman of the Drafting Committee (A/C.6/51/NUW/WG/CRP.87); restructured version submitted by Guatemala of the proposal from the Chairman of the Drafting Committee concerning article 33 as contained in document A/C.6/51/NUW/WG/CRP.83 (A/C.6/51/NUW/WG/CRP.88); report of the Coordinator of article 3 (A/C.6/51/NUW/WG/CRP.89); proposal submitted by the Russian Federation for article 2 on a new paragraph (d) (A/C.6/51/NUW/WG/CRP.90); amendment by China to the revised text of article 7 proposed by Austria, Canada, Portugal, Switzerland and Venezuela (A/C.6/51/NUW/WG/CRP.91); proposal submitted by the United States of America for article 2 (A/C.6/51/NUW/WG/CRP.92); proposal submitted by Egypt concerning the relationship between articles 5 and 7 (A/C.6/51/NUW/WG/CRP.93); Chairman's proposal for articles 5, 6 and 7 (A/C.6/51/NUW/WG/CRP.94); and report of the Coordinator for article 10 (2) (A/C.6/51/NUW/WG/CRP.95).

8. During the elaboration of the draft Convention on the Law of the Non-navigational Uses of International Watercourses, the Chairman of the Working Group of the Whole took note of the following statements of understanding pertaining to the texts of the draft Convention:

As regards article 1:

(a) The concept of "preservation" referred to in this article and the Convention includes also the concept of "conservation";

(b) The present Convention does not apply to the use of living resources that occur in international watercourses, except to the extent provided for in part IV and except insofar as other uses affect such resources.

As regards article 2 (c):

The term "watercourse State" is used in this Convention as a term of art. Although this provision provides that States and regional economic integration organizations can both fall within this definition, it was recognized that nothing in this paragraph could be taken to imply that regional economic integration organizations have the status of States in international law.

As regards article 3:

(a) The present Convention will serve as a guideline for future watercourse agreements and, once such agreements are concluded, it will not alter the rights and obligations provided therein, unless such agreements provide otherwise;

(b) The term "significant" is not used in this article or elsewhere in the present Convention in the sense of "substantial". What is to be avoided are localized agreements, or agreements concerning a particular project, programme or use, which have a significant adverse effect upon third watercourse States. While such an effect must be capable of being established by objective evidence and not be trivial in nature, it need not rise to the level of being substantial.

As regards article 6 (1) (e):

In order to determine whether a particular use is equitable and reasonable, the benefits as well as the negative consequences of a particular use should be taken into account.

As regards article 7 (2):

In the event such steps as are required by article 7 (2) do not eliminate the harm, such steps as are required by article 7 (2) shall then be taken to mitigate the harm.

As regards article 10:

In determining "vital human needs", special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.

As regards articles 21, 22 and 23:

As reflected in the commentary of the International Law Commission, these articles impose a due diligence standard on watercourse States.

As regards article 28:

The specific reference to "international organizations" is by no means intended to undermine the importance of cooperation, where appropriate, with competent international organizations on matters dealt with in other articles and, in particular, dealt with in the articles in part IV.

As regards article 29:

This article serves as a reminder that the principles and rules of international law applicable in international and non-international armed conflict contain important provisions concerning international watercourses and related works. The principles and rules of international law that are applicable in a particular case are those that are binding on the States concerned. Just as article 29 does not alter or amend existing law, it also does not purport to extend the applicability of any instrument to States not parties to that instrument.

* * *

Throughout the elaboration of the draft Convention, reference had been made to the commentaries to the draft articles prepared by the International Law Commission to clarify the contents of the articles.

9. At its 62nd meeting, on 4 April 1997, the Working Group adopted by vote the draft Convention reproduced in paragraph 10 below.

III. RECOMMENDATION OF THE WORKING GROUP OF THE WHOLE

10. The Working Group of the Whole recommends to the General Assembly the adoption of the following draft Convention:

Convention on the Law of the Non-navigational Uses of International Watercourses

The Parties to the present Convention,

Conscious of the importance of international watercourses and the non-navigational uses thereof in many regions of the world,

Having in mind Article 13, paragraph 1 (a), of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Considering that successful codification and progressive development of rules of international law regarding non-navigational uses of international watercourses would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter of the United Nations,

Taking into account the problems affecting many international watercourses resulting from, among other things, increasing demands and pollution,

Expressing the conviction that a framework convention will ensure the utilization, development, conservation, management and protection of international watercourses and the promotion of the optimal and sustainable utilization thereof for present and future generations,

Affirming the importance of international cooperation and good-neighbourliness in this field,

Aware of the special situation and needs of developing countries,

Recalling the principles and recommendations adopted by the United Nations Conference on Environment and Development of 1992 in the Rio Declaration and Agenda 21,

Recalling also the existing bilateral and multilateral agreements regarding the non-navigational uses of international watercourses,

Mindful of the valuable contribution of international organizations, both governmental and non-governmental, to the codification and progressive development of international law in this field,

Appreciative of the work carried out by the International Law Commission on the law of the non-navigational uses of international watercourses,

Bearing in mind United Nations General Assembly resolution 49/52 of 9 December 1994,

Have agreed as follows:

PART I. INTRODUCTION

Article 1

Scope of the present Convention

1. The present Convention applies to uses of international watercourses and of their waters for purposes other than navigation and to measures of protection, preservation and management related to the uses of those watercourses and their waters.

2. The uses of international watercourses for navigation is not within the scope of the present Convention except insofar as other uses affect navigation or are affected by navigation.

Article 2

Use of terms

For the purposes of the present Convention:

(a) "Watercourse" means a system of surface waters and groundwaters constituting by virtue of their physical relationship a unitary whole and normally flowing into a common terminus;

(b) "International watercourse" means a watercourse, parts of which are situated in different States;

(c) "Watercourse State" means a State Party to the present Convention in whose territory part of an international watercourse is situated, or a Party that is a regional economic integration organization, in the territory of one or more of whose Member States part of an international watercourse is situated;

(d) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

Article 3

Watercourse agreements

1. In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights or obligations of a watercourse State arising from agreements in force for it on the date on which it became a party to the present Convention.

2. Notwithstanding the provisions of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonizing such agreements with the basic principles of the present Convention.

3. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourse or part thereof.

4. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or any part thereof or a particular project, programme or use except insofar as the agreement adversely affects, to a significant extent, the use by one or more other watercourse States of the waters of the watercourse, without their express consent.

5. Where a watercourse State considers that adjustment and application of the provisions of the present Convention is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

6. Where some but not all watercourse States to a particular international watercourse are parties to an agreement, nothing in such agreement shall affect the rights or obligations under the present Convention of watercourse States that are not parties to such an agreement.

Article 4

Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to a significant extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on such an agreement and, where appropriate, in the negotiation thereof in good faith with a view to becoming a party thereto, to the extent that its use is thereby affected.

PART II. GENERAL PRINCIPLES

Article 5

Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention.

Article 6

Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) The social and economic needs of the watercourse States concerned;

(c) The population dependent on the watercourse in each watercourse State;

(d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;

(e) Existing and potential uses of the watercourse;

(f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

(g) The availability of alternatives, of comparable value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

3. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.

Article 7

Obligation not to cause significant harm

1. Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States.

2. Where significant harm nevertheless is caused to another watercourse State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

Article 8

General obligation to cooperate

1. Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.

2. In determining the manner of such cooperation, watercourse States may consider the establishment of joint mechanisms or commissions, as deemed necessary by them, to facilitate cooperation on relevant measures and procedures in the light of experience gained through cooperation in existing joint mechanisms and commissions in various regions.

Article 9

Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10

Relationship between different kinds of uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to articles 5 to 7, with special regard being given to the requirements of vital human needs.

PART III. PLANNED MEASURES

Article 11

Information concerning planned measures

Watercourse States shall exchange information and consult each other and, if necessary, negotiate on the possible effects of planned measures on the condition of an international watercourse.

Article 12

Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have a significant adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and

information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13

Period for reply to notification

Unless otherwise agreed:

(a) A watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate the findings to it;

(b) This period shall, at the request of a notified State for which the evaluation of the planned measures poses special difficulty, be extended for a period of six months.

Article 14

Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State:

(a) Shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation; and

(b) Shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15

Reply to notification

The notified States shall communicate their findings to the notifying State as early as possible within the period applicable pursuant to article 13. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall attach to its finding a documented explanation setting forth the reasons for the finding.

Article 16

Absence of reply to notification

1. If, within the period applicable pursuant to article 13, the notifying State receives no communication under article 15, it may, subject to its

obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

2. Any claim to compensation by a notified State which has failed to reply within the period applicable pursuant to article 13 may be offset by the costs incurred by the notifying State for action undertaken after the expiration of the time for a reply which would not have been undertaken if the notified State had objected within that period.

Article 17

Consultations and negotiations concerning planned measures

1. If a communication is made under article 15 that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, the notifying State and the State making the communication shall enter into consultations and, if necessary, negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period of six months unless otherwise agreed.

Article 18

Procedures in the absence of notification

1. If a watercourse State has reasonable grounds to believe that another watercourse State is planning measures that may have a significant adverse effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth its grounds.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or

permitting the implementation of those measures for a period of six months unless otherwise agreed.

Article 19

Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such case, a formal declaration of the urgency of the measures shall be communicated without delay to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

PART IV. PROTECTION, PRESERVATION AND MANAGEMENT

Article 20

Protection and preservation of ecosystems

Watercourse States shall, individually and, where appropriate, jointly, protect and preserve the ecosystems of international watercourses.

Article 21

Prevention, reduction and control of pollution

1. For the purpose of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually and, where appropriate, jointly, prevent, reduce and control the pollution of an international watercourse that may cause significant harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to arriving at mutually agreeable measures and methods to prevent, reduce and control pollution of an international watercourse, such as:

(a) Setting joint water quality objectives and criteria;

(b) Establishing techniques and practices to address pollution from point and non-point sources;

(c) Establishing lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22

Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States.

Article 23

Protection and preservation of the marine environment

Watercourse States shall, individually and, where appropriate, in cooperation with other States, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

Article 24

Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:

(a) Planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(b) Otherwise promoting the rational and optimal utilization, protection and control of the watercourse.

Article 25

Regulation

1. Watercourse States shall cooperate, where appropriate, to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.

2. Unless otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 26

Installations

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has reasonable grounds to believe that it may suffer significant adverse effects, enter into consultations with regard to:

(a) The safe operation and maintenance of installations, facilities or other works related to an international watercourse; and

(b) The protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

PART V. HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 27

Prevention and mitigation of harmful conditions

Watercourse States shall, individually and, where appropriate, jointly, take all appropriate measures to prevent or mitigate conditions related to an international watercourse that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 28

Emergency situations

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct, such as industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

PART VI. MISCELLANEOUS PROVISIONS

Article 29

International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and non-international armed conflict and shall not be used in violation of those principles and rules.

Article 30

Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present Convention, including exchange of data and information, notification, communication, consultations and negotiations, through any indirect procedure accepted by them.

Article 31

Data and information vital to national defence or security

Nothing in the present Convention obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32

Non-discrimination

Unless the watercourse States concerned have agreed otherwise for the protection of the interests of persons, natural or juridical, who have suffered or are under a serious threat of suffering significant transboundary harm as a result of activities related to an international watercourse, a watercourse State shall not discriminate on the basis of nationality or residence or place where the injury occurred, in granting to such persons, in accordance with its legal system, access to judicial or other procedures, or a right to claim compensation or other relief in respect of significant harm caused by such activities carried on in its territory.

Article 33

Settlement of disputes

1. In the event of a dispute between two or more Parties concerning the interpretation or application of the present Convention, the Parties concerned shall, in the absence of an applicable agreement between them, seek a settlement of the dispute by peaceful means in accordance with the following provisions.

2. If the Parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice.

3. Subject to the operation of paragraph 10, if after six months from the time of the request for negotiations referred to in paragraph 2, the Parties concerned have not been able to settle their dispute through negotiation or any other means referred to in paragraph 2, the dispute shall be submitted, at the request of any of the parties to the dispute, to impartial fact-finding in accordance with paragraphs 4 to 9, unless the Parties otherwise agree.

4. A Fact-finding Commission shall be established, composed of one member nominated by each Party concerned and in addition a member not having the nationality of any of the Parties concerned chosen by the nominated members who shall serve as Chairman.

5. If the members nominated by the Parties are unable to agree on a Chairman within three months of the request for the establishment of the Commission, any Party concerned may request the Secretary-General of the United Nations to appoint the Chairman who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. If one of the Parties fails to nominate a member within three months of the initial request pursuant to paragraph 3, any other Party concerned may request the Secretary-General of the United Nations to appoint a person who shall not have the nationality of any of the parties to the dispute or of any riparian State of the watercourse concerned. The person so appointed shall constitute a single-member Commission.

6. The Commission shall determine its own procedure.

7. The Parties concerned have the obligation to provide the Commission with such information as it may require and, on request, to permit the Commission to have access to their respective territory and to inspect any facilities, plant, equipment, construction or natural feature relevant for the purpose of its inquiry.

8. The Commission shall adopt its report by a majority vote, unless it is a single-member Commission, and shall submit that report to the Parties concerned setting forth its findings and the reasons therefor and such recommendations as it deems appropriate for an equitable solution of the dispute, which the Parties concerned shall consider in good faith.

9. The expenses of the Commission shall be borne equally by the Parties concerned.

10. When ratifying, accepting, approving or acceding to the present Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute not resolved in accordance with paragraph 2, it recognizes as compulsory ipso facto and without special agreement in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice; and/or

(b) Arbitration by an arbitral tribunal established and operating, unless the parties to the dispute otherwise agreed, in accordance with the procedure laid down in the annex to the present Convention.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with subparagraph (b).

PART VII. FINAL CLAUSES

Article 34

Signature

The present Convention shall be open for signature by all States and by regional economic integration organizations from ... until ... at United Nations Headquarters in New York.

Article 35

Ratification, acceptance, approval or accession

1. The present Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

2. Any regional economic integration organization which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, the regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Secretary-General of the United Nations of any substantial modification in the extent of their competence.

Article 36

Entry into force

1. The present Convention shall enter into force on the ninetieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States.

Article 37

Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Convention.

DONE at New York, this _____ day of _____ one thousand nine hundred and ninety-seven.

ANNEX

ARBITRATION

Article 1

Unless the parties to the dispute otherwise agree, the arbitration pursuant to article 33 of the Convention shall take place in accordance with articles 2 to 14 of the present annex.

Article 2

The claimant party shall notify the respondent party that it is referring a dispute to arbitration pursuant to article 33 of the Convention. The notification shall state the subject matter of arbitration and include, in particular, the articles of the Convention, the interpretation or application of which are at issue. If the parties do not agree on the subject matter of the dispute, the arbitral tribunal shall determine the subject matter.

Article 3

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the Chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute or of any riparian State of the watercourse concerned, nor have his or her usual place of residence in

the territory of one of these parties or such riparian State, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 4

1. If the Chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of a party, designate the Chairman within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice, who shall make the designation within a further two-month period.

Article 5

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 7

The arbitral tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Article 8

1. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

2. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10

Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

1. The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

2. The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of

the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

3. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

4. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Notes

[1] For the report of the Sixth Committee on the work of the Working Group at its first session, held from 7 to 25 October 1996, see document A/51/624.

[2] Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10 (A/49/10), chap. III.D.